

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CASE NUMBER 1:20CV66

JANE ROE,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA, et al.,)
)
Defendants.)

DEFENDANTS' JOINT MOTION FOR EXTENSION OF TIME
TO ANSWER OR OTHERWISE RESPOND
TO PLAINTIFF'S COMPLAINT

On behalf of Defendants United States of America, Judicial Conference of the United States, Administrative Office of the United States Courts, United States Court of Appeals for the Fourth Circuit, Judicial Council of the Fourth Circuit, Federal Public Defenders' Office, Roslynn R. Mauskopf and James C. Duff, in their official capacities, General Counsel Sheryl L. Walter, Chief Judge Roger L. Gregory, James N. Ishida, and the Federal Public Defender named in the complaint (the "FPD"),¹ in their individual and official capacities, (collectively, "Defendants"), the undersigned counsel hereby move the Court for an extension of time of thirty

¹ The name of the FPD is redacted in Plaintiff's complaint. Also, Plaintiff previously moved to seal unspecified personally identifying employment history information, which presumably includes the name of the FPD redacted from the complaint. See ECF No. 2.

days to answer or otherwise respond to Plaintiff's Complaint, until and including June 8, 2020. In support of this Motion, the following is provided:

1. On March 3, 2020, Plaintiff Jane Roe filed this lawsuit. Doc. 1.
2. On March 6, 2020, summons were issued. Docs. 3 and 4.
3. The U.S. Attorney and United States Attorney General were served on March 9, 2020.
4. In order to effectuate service on a federal employee sued in their individual and official capacities, a plaintiff must serve the U.S. Attorney General, the U.S. Attorney's Office, and must also serve the individual in accordance with Fed. R. Civ. P. 4(e), (f), or (g). *See* Fed. R. Civ. P. 4(i). Once properly served, the United States, federal agencies, and federal employees sued in their individual and official capacities have sixty days to respond to the complaint. *See* Fed. R. Civ. P. 12(a)(3).
5. At the earliest, the current deadline to answer or otherwise respond to the Complaint would be May 8, 2020, i.e., 60 days from the date upon which the United States Attorney and United States Attorney General were served. *See, e.g.,* Fed. R. Civ. P. 12(a)(3) (a federal employee sued in an individual capacity must respond to a complaint "within 60 days after service on the officer or employee or service on the United States Attorney, whichever is later").

6. Chief Judge Gregory, Circuit Executive James Ishida, and General Counsel Sheryl L. Walter, have, pursuant to 28 C.F.R. § 50.15, submitted requests for DOJ representation. As of April 22, 2020, the Department of Justice Constitutional and Specialized Torts Branch has not made a decision on those requests.

7. Pursuant to the procedures outlined in 28 C.F.R. § 50.15, the undersigned is awaiting a representation determination by the Constitutional Torts Branch of the Department of Justice. The undersigned has reason to believe that the authorization decision is likely forthcoming. But even if that decision occurs soon, the undersigned will need time to confer with all of the Defendants and agency counsel, conduct a review of the applicable law and facts, and prepare an appropriate response to Plaintiff's Complaint, which will require coordination among three separate sections within Main DOJ.

8. Regarding Chief Judge Gregory, Circuit Executive James Ishida, and General Counsel Sheryl L. Walter, in their individual capacities, the undersigned Assistant United States Attorney and Federal Programs Counsel do not currently have authority to represent them in their individual capacities; however, the undersigned Assistant United States Attorney and Federal Programs Counsel can represent conditionally to the extent necessary to maintain the status quo. This motion for extension of time is made to maintain the status quo by extending the

time to answer or otherwise respond to the Complaint to allow their requests for DOJ representation to be processed and for necessary actions once a decision has been made.

9. Since the filing of this action on March 3, 2020, an unprecedented public health challenge, the COVID-19 outbreak in the United States, has affected the representation approval process as the undersigned and other government attorneys have transitioned to teleworking.

10. On April 1, 2020, the Chief Judge of the United States District Court for Western District of North Carolina issued a Standing Order Regarding Criminal Jury Trials and Other Matters, continuing all criminal jury trials scheduled to begin on any date from now through June 1, 2020. *See In Re: COVID-19 Administrative Order Regarding Criminal Jury Trials and Other Matters*, 3:20-mc-00048-FDW, Doc. 4, at 3. This Order further provides that “All other hearings, conferences, and/or proceedings are subject to the discretion of the individual judge presiding over the proceeding.” *Id.*

11. For all of these reasons, the undersigned hereby move the Court for an extension of time to answer or otherwise respond to Plaintiff’s Complaint, until and including June 8, 2020.

12. Pursuant to Local Civil Rule 7.1(b)(2), the undersigned has consulted with Plaintiff's Counsel before filing this Motion. Plaintiff's Counsel does not oppose Defendants' request for an extension of time.

WHEREFORE the undersigned hereby move the Court for an extension of time for Defendants to answer or otherwise respond to Plaintiff's Complaint, until and including June 8, 2020.

This the 22nd day of April, 2020.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

CARLOTTA P. WELLS
Assistant Branch Director

s/Joshua Kolsky
JOSHUA M. KOLSKY
Trial Attorney
D.C. Bar No. 993430
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW Washington, DC 20005
Tel.: (202) 305-7664
Fax: (202) 616-8470
E-mail: Joshua.kolsky@usdoj.gov

R. ANDREW MURRAY
UNITED STATES ATTORNEY

s/Gill P. Beck
GILL P. BECK
Assistant United States Attorney
Chief, Civil Division
N.C. State Bar No. 13175

Room 233, U.S. Courthouse
100 Otis Street
Asheville, North Carolina 28801
Phone: (828) 271-4661
Fax: (828) 271-4327
Email: Gill.Beck@usdoj.gov

Counsel for Defendants United States of America, Judicial Conference of the United States, Administrative Office of the United States Courts, United States Court of Appeals for the Fourth Circuit, Judicial Council of the Fourth Circuit, the Federal Public Defenders Office, Roslynn R. Mauskopf, James C. Duff, and the FPD, in their official capacities, and General Counsel Sheryl L. Walter, Chief Judge Roger L. Gregory, and Circuit Executive James N. Ishida, in their individual and official capacities.

s/Shannon Sumerell Spainhour
SHANNON SUMERELL SPAINHOUR
N.C. State Bar No. 28108
DAVIS HARTMAN WRIGHT PLLC
28 Schenck Parkway, Suite 200
Asheville, NC 28803
Phone: 828-771-0833
Fax: 252-514-9878
Email: mss@dhwlegal.com

Counsel for the FPD in the FPD's individual capacity